IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7768 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GALBAJI JAISANGJI THAKORE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7768 of 2001

MR DM THAKKAR for Petitioner No. 1

MR K.T.DAVE, AGP for Respondents No. 1-3

MS PJ DAVAWALA for Respondent No. 4

RULE SERVED BY DS for Respondent No. 4

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 11/10/2001

ORAL JUDGEMENT

By means of filing this petition under Article 226 of the Constitution of India, the petitioner/detenue who has been detained by the District Magistrate, Mehsana, vide order dated July 21, 2001 (Annexure-A to the petition) in exercise of the powers conferred under sub-Section 2 of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 ('the P.B.M. Act' for short hereinafter) , has challenged the said order and prayed to issue a writ of habeas corpus or any other writ, order or direction quashing and setting aside the order of detention and set him at liberty forthwith.

2. The averments made in the petition and the grounds of detention manifest that the petitioner is a fair price shop owner situated at Bhimpur, taluka Satlasana, District Mehsana. On July 6, 2001, the Chief Supply Officer, Mehsana on receipt of the information that the stock of wheat and rice meant for public distribution system is transported to Visnagar, carried out an of the firm Kishan Traders and Jain Trading Company. After inquiry it was found that the stock of 9 quintal of rice, which is meant for distribution to ration card holders was found from Kishan Traders. It was found after making necessary inquiry that the aforesaid stock of rice and other stock of wheat was lifted from Government godown by the petitioner and the Manager of Dabhoda Co-operative Society who are running fair price shop, was delivered to Kishan Traders and Jain Trading Company, thus the petitioner had acted in a manner which is prejudicial to the maintenance of public order, and, therefore, the detaining authority though that the petitioner is carrying the activities in the manner prejudicial to the maintenance of supply of commodities essential to the community and public at large and therefore, the authority found it necessary to detain the petitioner on the grounds stated in the impugned order.

3. Though the petitioner has challenged the order of detention on various grounds, Mr. D.M.Thakkar, learned advocate for the petitioner has restricted his arguments to the effect that non-supply of the legible copies of the documents referred to and relied upon by the detaining authority while recording the order of detention has seriously prejudiced the right of the petitioner in making an effective representation to the concerned authority. The infirmity in this regard is violative of the constitutional safeguard as enshrined in Article 22(5) of the Constitution. He, therefore, urged that on this count alone, the petition deserves to be

allowed by quashing and setting the order of detention and setting the petitioner at liberty forthwith.

4. Mr. K.T.Dave, learned AGP appeared for respondent nos. 1, 2 & 3 and contested the petition by making his oral submissions whereas Ms P.J.Davawala, learned counsel appeared for respondent no. 4, Union of India, and contested the petition by filing affidavit in reply sworn by S.L.Meena, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi. However, they does not dispute the factual aspect with regard to the fact that some of the pages of the documents supplied to the petitioner/detenu by the detaining authroity are illegible. They, therefore, urged to pass appropriate order in light of the settled principles enunciated by the Supreme Court as well as this Court in this regard.

5. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition and the documents annexed therewith and also considered the affidavit in reply filed by the contesting respondents and the impugned order - Annexure-A to the petition.

6. A similar question arose in the case of VIKRAMSINH PRAVINSINH RANA V. STATE OF GUJARAT - 1988 (2) GLH 414. In that case some of the pages of the judgement supplied to the petitioner/detenu are not legible and Division Bench of this Court has held that it would amount to non-communication of the grounds and it also adversely affected the right of the petitioner's making an effective representation to the concerned authority and therefore, order of detention was quashed and set aside.

7. Applying the facts of the aforesaid case to the facts of the present case, at the cost of repetition be it stated that some of the pages of the documents relied upon by the petitioner, supplied by the detaining authority, are illegible and therefore, it can be said that non-supply of the legible copies has seriously prejudiced the right of the petitioner's making an effective representation. The infirmity in this regard is violative of constitutional safeguard as enshrined in Article 22(5) of the Constitution and, therefore, on this ground order of detention stands vitiated.

8. Seen in the above context, the detention order is vulnerable, bad in the eyes of law and therefore liable

to be quashed and set aside by allowing the petition.

9. For the foregoing reasons, petition succeeds and is accordingly allowed. The impugned order of detention dated July 21, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*